

**Operating Policies and Procedures  
For  
Federal Monitoring and Oversight Contract**

**Revised: September, 2001**

## Foreword

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The Federal Monitoring and Oversight Contract is a one year contract, with four one (1) year options, designed to strengthen Federal monitoring and oversight across the 6600+ Intermediate Care Facilities for Persons with Mental Retardation (ICFs/MR) that currently exist in the country. Through this contract, CMS will take aggressive action to protect the individuals who live in ICFs/MR from abuse, neglect and mistreatment through the use of Federal comparative (look-behind) surveys, complaint investigations and crisis assignments.

This contract will give CMS a greater ability to respond/react in a timely manner to crisis and complaint situations that may arise anywhere in the country that endanger the health or safety of individuals with mental retardation and other developmental disabilities living in congregate settings. CMS intends to protect its beneficiaries by aggressively exercising its federal look-behind authority.

The Contractor will collect and analyze data to provide CMS with recommendations to evaluate the effectiveness and efficiency of state agency's performance in conducting the survey process.

The purpose of this operational policies and procedures manual is to provide guidance and to ensure consistent and standardized methods of implementation for the required actions herein, in conjunction with all applicable laws, guidelines, and regulations relevant to ICFs/MR.

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## **CRITERIA FOR SITE SELECTION for COMPARATIVE SURVEYS and SPECIAL INVESTIGATIONS**

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### ***Policy:***

*Site selection will be objectively determined using criteria set forth by CMS and in accordance with all applicable laws, guidelines, regulations and policies relevant to Intermediate Care Facility for Persons with Mental Retardation (ICF/MR) programs.*

### ***Purpose:***

- (1) To assure providers that facilities are objectively selected by criteria set forth by CMS Central and Regional Office staff.
- (2) To provide guidelines for the selection criteria to validate the SA's determinations of compliance with Federal regulations.
- (3) To gather and analyze cross sampling data, to be used by the Contractor to provide CMS with recommendations that identify potential quality improvement initiatives, i.e., training and strategic planning.

### ***Procedures:***

- (1) CMS will identify potential sites for comparative surveys and special investigations using the following variables:
  - (a) Location of facility (state and region)
  - (b) Size of facility
  - (c) Private (for profit or not) or state operated
  - (d) Facility is a member of a chain
  - (e) OSCAR data/analysis
  - (f) Zero deficiencies
  - (g) Only standard level deficiencies cited
  - (h) Same CoP cited in consecutive years
  - (i) None or few abuse or neglect citations
  - (j) Only one of the fundamental CoPs (Client Protections, AT, Client Behaviors and Facility Practices, Health Services) cited over the last 3 years.
  - (k) Facility contains a locked unit to incarcerate criminal offenders
  - (l) Use of restrictive program procedures including: restraints, time-out rooms, drugs to manage behavior, aversive conditioning
  - (m) Lack of Federal oversight for 1-3 years
  - (n) Compliance Performance Information from CO and RO
  - (o) Complaints from any source
  - (p) Deviation from the norm
  - (q) Media/Public Concern

## **SCHEDULING COMPARATIVE SURVEYS and SPECIAL INVESTIGATIONS**

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### ***Policy:***

*A national team of Federal surveyors shall be available on both a scheduled and as-needed basis to conduct comparative (look-behind) surveys and special investigations including complaint and crisis assignments.*

### ***Purpose:***

- (1) To assess State Survey Agency's (SA) performance in the interpretation, application, and enforcement of Federal requirements.
- (2) To ensure that quality supports, services and training are provided to individuals living in Intermediate Care Facilities for Persons with Mental Retardation (ICFs/MR).
- (3) To respond/react in a timely manner to crisis and complaint situations that may arise, and that endanger the health or safety of individual with mental retardation and other developmental disabilities living in congregate settings.

### ***Procedures:***

- (1) Comparative surveys will be conducted as soon as possible, but not later than 30 days following the completion of a survey conducted by the State Survey Agency.
- (2) The Contractor shall develop a schedule in conjunction with Central and Regional office designees (COD and ROD) to determine the date and location of the Federal comparative surveys.
- (3) To assist the Contractor in developing a survey schedule, from a fixed point in time, the SA will provide the ROD and the COD with the following, using the form provided:

#### **Facilities surveyed in the preceding three weeks (See attached form):**

- (a) Name, location and size of the facility
- (b) actual start date of the survey
- (c) actual length of the health services component of the survey,
- (d) actual type of survey initiated and concluded (fundamental, extended, full
- (e) team size and composition

- (f) whether or not Conditions of Participation were found to be out of compliance.

***For example, the COD and ROD should receive on July 9, 2001, the SA's survey schedule of facilities actually surveyed from the previous three weeks in June/July.***

The SA will provide the original three (3) week schedule and all subsequent schedule changes to the COD and ROD (**see attached 2001 calendar for Reporting State Survey Scheduling to CMS Regional and Central Offices**). The COD will forward all information on the day received to the Contractor, by the close of the business day.

- (4) If the ROD has recommendations for comparative survey sites and/or special investigations, he/she will provide rationale for site selection(s) to the COD within 24 hours of receipt of the SA's survey schedule.
- (5) Federal Comparative Surveys will typically not be conducted at facilities in which the SA found Conditions of Participation to be out of compliance or where other adverse action is in effect.
- (6) The Contractor will utilize this information as well as information from the Online Survey Certification and Reporting System (OSCAR) and other sources that CMS identifies to make recommendations with rationale, to the COD, for locations of comparative surveys and special investigations. The ROD may contact COD at any time to indicate a need for special investigations and crisis assignments. Special Investigations will be incorporated into the survey schedule and may supercede the recommended survey dates for selected sites.  
**(See Site Selection For Comparative Surveys and Special Investigations)**
- (7) Final approval of the Federal survey schedule rests with the COD. The COD will approve FST survey schedule withi24 hours of receipt.
- (8) Once the COD has approved the survey schedule, the COD will share the survey schedule with all Regional Offices.
- (9) Within five days prior to the start of the Federal survey, the ROD will contact the respective SA contact person and request that the SA's completed 2567 be electronically transmitted to the ROD within 24 hours of notification. The ROD will immediately transmit a copy of the State's 2567 to the COD and the Performance Review Facilitator.
- (10) At this time, the ROD will also request a copy of the SA's list of individuals included in the core sample as well as individuals added to the sample.

The ROD will forward the sample to the Federal Survey Team Leader (FSTL) prior to the start of the Federal survey.

- (11) When the COD receives the Federal Survey Team's 2567, she will electronically forward the SA's completed 2567 to the Federal Survey Team Leader. The Federal Survey Team will review the Statement of Deficiencies, Form CMS 2567, completed by the SA, once the Federal survey has been concluded, not before. (Note the ROD will retain responsibility for transmitting all non-electronic/faxed copies of the SA's 2567 to both the Federal Survey Team Leader and the COD).  
**(Reference: Protocol for Processing Form CMS - 2567, Procedure #4)**
- (12) If a Special Investigation is included in the Federal survey schedule, the Contractor will contact the COD to obtain pertinent data/information based on the nature of the investigation. The COD, ROD and Federal Survey Team Leader will maintain communication regarding the nature of the investigation.
- (13) Once the Federal survey schedule of comparative surveys has been confirmed, but no later than two weeks prior to the scheduled comparative survey, the Contractor will prepare pre-survey reports and related materials for the Federal Survey Team and will forward the data to the Federal Survey Team Leader. The Contractor shall also request any related materials from the ROD which may include:
  - (a) Historical;
  - (b) Background;
  - (c) Descriptive information;
  - (d) Past performance of the facility;
  - (e) Past complaint investigations regarding the facility;
  - (f) Activities conducted there by the SA and
  - (g) Any other documentation or substantiating information that may be considered useful in understanding the needs and issues for individuals living in the facility scheduled for a comparative survey. The Contractor shall ensure that, in preparation for the survey, Team members have access to, and review of documents of record including previous survey reports, Life Safety Code, complaints, licensure records if available, and fire inspection reports.

## CONDUCTING THE COMPARATIVE SURVEY: THE EIGHT (8) SURVEY TASKS

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### ***Policy:***

*All comparative surveys will be conducted in accordance with all applicable laws, guidelines, regulations and policies relevant to ICF/MR programs. The Contractor shall ensure that survey protocols are used by all Federal surveyors to measure compliance with Federal requirements.*

### ***Purpose:***

- (1) To ensure that the Contractor adheres to guidelines, applicable laws, policies and procedures outlined in the State Operations Manual (SOM), Appendix Q, Appendix U and Appendix J: Transmittal Nos. 4, 277 and 278.
- (2) To ensure consistency and comparability of the survey process conducted by the Federal Survey Team and the State Survey Agency (SA), by comparing the findings of the SA with the Federal Survey Team findings.

### ***Procedures:***

- (1) The Federal Survey Team (FST) will follow Appendix J: Transmittals 277 & 278, which include the eight (8) survey tasks.
- (2) The Federal Survey Team will start the survey process at the same stage as the SA (fundamental or full). In the event the Federal Survey Team determines the need to move to the next stage of the survey process based on its findings, the Federal Survey Team Leader should inform the ROD for authorization and the Contractor for notification. In the event the Federal Survey Team Leader is unable to make contact with the ROD, the Team is authorized to move to the next stage of the survey process, according to the guidelines found in Transmittal 278, Part III: Survey Process. *Neither the fundamental or the extended survey process preclude the Federal Survey Team from review of any standard, if evidence of non-compliant facility practice is suspected during any survey.* **(Reference Appendix J: Section III. Survey Process)**
- (3) The FST will validate the sample selection determined by the SA. This will be achieved by following the outlined procedures for drawing a sample of individuals from the facility to reflect a proportionate representation of individuals.  
**(See Appendix J: Section V. Task 1 - Sample Selection)**



- (4) For the purpose of a comparative survey, the sample selection for the facility will consist of 75% of the individuals selected by the SA. The Federal Survey Team shall follow guidelines established for sample selection **(see Transmittal 278; Section V. Task 1, Sample Selection)**. In order to ensure that systems have been implemented for all individuals, the remaining 25% will be comprised of individuals not included in the SA's original sample selection. For the remaining 25%, the Federal Survey Team shall follow guidelines established for sample selection **(see Transmittal 278: Section V. Task 1, Sample Selection; See Protocol #1 for Implementation of the Federal Monitoring and Oversight Contract: The Sampling Process)**.
- (5) If the Federal Survey Team does not have access to the SA's sample selection the FST shall draw its own sample following guidelines established for sample selection (see Transmittal 278; Section V. Task 1, Sample Selection) and indicate this on the Comparative Checklist.
- (6) In addition to all forms required in Appendix J, as updated by Transmittals 4, 277 & 278, the Federal Survey Team will also be required to:
- (a) record all individual observation and interview notes and any other surveyor notes for each observation and interview conducted, using the Individual *Observation Worksheet*, Form CMS - 3070I.
  - (b) record notes from the drug pass observation on the Drug Pass *Observation Worksheet*, Form CMS-677.
  - (c) complete the sample identification form which records the individuals included in the FST sample, the code for identifying individuals and the reason that an individual was included in the sample. This FST Leader also records the State Survey Agency's sample selection with the code the State used for identifying individuals.

## PROTOCOL FOR REPORTING IMMEDIATE JEOPARDY

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### **Policy:**

*The Federal Survey Team (FST) will follow guidelines in Appendix Q for Immediate Jeopardy. The Regional Office Designee (ROD) retains the authority to determine who (RO or the State Survey Agency (SA) will be responsible for enforcement actions and follow-up activities based on the circumstances relating to the Immediate Jeopardy.*

**(Reference: SOM 3040 Terminating Medicaid ICFs/MR Eligibility Based on "Look Behind Authority.")**

### **Purpose:**

To clarify the role of the Contract Surveyor in reporting Immediate Jeopardy.

### **Procedures:**

- (1) Refer to **Appendix Q** for guidelines for determining Immediate Jeopardy
- (2) **Team Actions: (Substitution for Appendix Q - Section V. B. 5. A & c.)**
  - (a) When an Immediate Jeopardy situation is suspected, notify the Federal Survey Team Leader immediately, who will in turn contact the ROD for guidance.  
**(Reference Appendix Q - V.B.5.a., page Q-8)**

In the absence of the ROD, contact the Central Office Designee (COD). If both are absent, proceed with the investigation per Appendix Q.  
**Note: Appendix Q - V.B.5.b. (Contact SA per protocol does not apply to the FST.)**
  - (b) If suspicion of Immediate Jeopardy is confirmed by the ROD (or COD), the Federal Survey Team Leader will coordinate the investigative efforts per the requirements outlined in Appendix Q (V.B.5.a., page Q-8). If the FST Leader identifies the need for additional expertise to investigate the IJ, he/she will discuss this with the ROD (or COD). If the ROD concurs, the FST Leader will contact the Contractor's Performance Review Facilitator, who will deploy staff as needed.

- (c) Under most circumstances, the FST should continue to conduct the comparative survey concurrently with the IJ investigation.
- (d) If the Federal Survey Team reaches a consensus that Immediate Jeopardy does not exist, no further action is necessary.
- (e) Substitution for Appendix Q: Implementation - VI.A.B. & C.

- A. Federal Survey Team Actions--If the FST reaches a consensus concerning the presence of Immediate Jeopardy, the team Leader then contacts the ROD (or COD in absence of ROD). If the FST Leader is unable to follow the protocol for administrative consultation, actions to proceed with implementation of Immediate Jeopardy must continue. The Federal Survey Team will decide if any other agencies need to be notified, e.g., Law Enforcement Agency, Nurses Aide Registration Board.

**NOTE: Any criminal act needs to be reported to the local law enforcement agency. The entity should be encouraged to make the report, if needed. The surveyor should only assume this responsibility if the entity refuses.**

- B. When IJ is confirmed, the ROD (or COD in absence of ROD), will notify the SA for those facilities in which the SA will assume enforcement action and follow-up activities.
- C. Once the Federal Survey Team has decided that Immediate Jeopardy exists, the team should notify the administration of the Immediate Jeopardy. A verbal notice should be given with the specific details, including the individuals at risk, before the survey team leaves the premises of the entity. The entity should begin immediate removal of the risk to individuals, and immediately implement corrective measures to prevent repeat Jeopardy situations. The team should encourage the entity to provide evidence of their implementation of corrective measures.
- D. The FST Leader must provide the ROD with written documentation describing the circumstances of IJ and the facility's response to date.

The FST Leader will electronically transmit this documentation to the ROD, COD and the Contractor's Performance Review Facilitator, immediately (by Close of Business) following the exit conference.

- E. The ROD will review the FST's documentation and if it is determined that the SA will be responsible for enforcement actions and follow-up activities, the ROD will immediately forward the written documentation to the SA. The SA will be responsible for delivery of written notice to the facility, describing the IJ, no later than 2 days following the exit conference.

If the ROD retains responsibility for enforcement actions and follow-up activities, the ROD must deliver written notice to the facility, with copies to the SA and the State Medicaid Agency (SMA), describing the IJ, no later than 2 working days following the exit conference. This notice should be sent by electronic facsimile, telegram or other expeditious means and should include information regarding the status of the facility's action to remove IJ.

**(See Exhibit 185).**

**(Reference: Appendix Q - Documentation b. 1-5, page Q-16 for additional information)**

- F. The SA proceeds with enforcement actions for all privately operated facilities unless the RO exercises its discretion to retain follow-up activities in conjunction with the FST. The RO will proceed with enforcement actions and follow-up activities for all state operated facilities.  
(Reference: SOM Section 3050 G.1.)

- (f) The Federal Survey Team Leader shall notify the COD and the Contractor's Performance Review Facilitator as soon as possible, that Immediate Jeopardy exists.

## **PROTOCOL for PROCESSING Form CMS-2567 (STATEMENT OF DEFICIENCIES)**

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### ***Policy:***

*The Federal Survey Team will follow procedures outlined in Appendix U, Principles of Documentation, to complete Form CMS-2567. All findings from a survey will be recorded on Form CMS 2567 and will follow survey protocols established to process Form CMS -2567. The Contractor will adhere to all time lines and deadlines as outlined in the SOM and Federal Regulations. The FST's 2567 will be reviewed, approved and signed by the Regional Office Designee (ROD). The Regional Office Designee (ROD) retains the authority to determine who (RO or the State Survey Agency (SA) will be responsible for enforcement actions and follow-up activities.*

### ***Purpose:***

- (1) To clarify the procedures that the Federal Survey Teams shall follow to process Form CMS-2567 Statement of Deficiencies.
- (2) To assure accurate reporting of data collection and analysis.

### ***Procedures:***

- (1) The Federal Survey Team will utilize the ASPEN computer database program to generate Form CMS 2567, the Statement of Deficiencies.
- (2) The Federal Survey Team will utilize the State Operations Manual (SOM), Section 2728, as a resource for processing the Form CMS-2567.  
*( Refer to Principle #1 in Appendix U, Principles of Documentation, for specific guidance on preparing this statement)*
- (3) Within twenty-four (24) hours (one business day) of completing the Federal comparative survey, the Federal Survey Team Leader shall electronically transmit to the ROD, COD and the Performance Review Facilitator, the Form CMS - 2567, which shall include all deficiencies identified by the contract team,
- (4) Once the Central Office Designee receives the Federal Survey Team's 2567, she will immediately forward electronically the SA's completed 2567 to the Federal Survey Team Leader. (Note the ROD will retain responsibility for transmitting all non-electronic/faxed copies of the SA's 2567 to both the Federal Survey Team Leader and the COD).

- (5) The FST Leader reviews the SA's 2567 and completes a preliminary Check Sheet for Federal Comparative Surveys. The FST Leader electronically transmits a copy of the preliminary Check Sheet to the ROD, the COD and the Performance Review Facilitator within 48 hours (two business days) of the exit conference.
- (6) In order to ensure that all timelines are met, the COD will initiate a teleconference by the 3rd business day following the exit conference, with the ROD, Federal Survey Team Leader and the Performance Review Facilitator for the purpose of:
  - (a) Discussing the FST's findings described in the Statement of Deficiencies and to assure that the Principles of Documentation have been implemented accurately. The RO must sign the FST's 2567 when they are in agreement with the findings. The Contractor will use this 2567 to enter data into OSCAR;
  - (b) Reviewing the comparative analysis of the SA's findings with the findings of the FST's 2567; and
  - (c) Discussing the Check Sheet for Federal Comparative Surveys.

**Note: If the ROD is satisfied with the FST's 2567 and the preliminary Check Sheet, the ROD may choose to forgo this conference call.**

- (7) Within 24 hours (one business day) of this conference call, the FST Leader will update the Federal Survey Team's 2567 to reflect any changes recommended by the ROD and will forward revised copies of the 2567 to the ROD, the COD and the Performance Review Facilitator. The FST Leader is not authorized to make any further changes to the Federal Survey Team's 2567 without the express approval of the ROD.
- (8) Within 24 hours (one business day) of this conference call, and with approval of the ROD, the FST Leader will also forward a final copy of the Check Sheet to the ROD, COD and Performance Review Facilitator only, and will maintain a file copy.
- (9) Within 5 business days following the initial teleconference, the ROD shall share a copy of the FST's 2567 and Sample Selection with identified State Agency (SA) representatives and initiate a teleconference with the SA, FST Leader, PRF and COD for the purpose of:

- (a) Sharing the findings and discrepancies between the FST's 2567 and the SA's 2567;
- (b) Making recommendations to the SA for procedural changes and/or training needs to improve the accuracy of implementing the survey process;
- (c) Determining responsibility for enforcement action and follow-up activities with the facility.

**Note: The ROD may choose to forgo this conference call if the findings do not necessitate further discussion with the SA. If the teleconference is not held, the ROD must still notify the SA of the comparative results. Any discrepancies identified by the SA should be communicated to the COD for data collection purposes.**

- (10) The FST Leader shall prepare a supplemental 2567, that includes only new deficiencies identified by the FST (i.e., shall not include duplicate deficiencies cited on the SA's 2567 or deficiencies still in process of corrective action based on the timelines established by the facility's Plan of Correction; however, if duplicate deficiencies are identified by the FST and the facility has failed to correct the deficiencies by the date noted on its Plan of Correction, these duplicate deficiencies should be included on the Federal 2567 sent to the facility. This information can be obtained during the conference call with the State Agency). This supplemental 2567 must be forwarded to the ROD, the COD and the Performance Review Facilitator within 24 hours of the 2<sup>nd</sup> teleconference call described in procedure 9 above (i.e., by the 9<sup>th</sup> business day following the exit conference).
- 11. Within ten business days following the exit conference, the Regional Office shall transmit a copy of the supplemental 2567 to the facility with written notification of the completion of a Federal Comparative Survey, its unduplicated findings (see #10 above), that the Plan of Correction must be forwarded to the Regional Office within specified timeframes and that identifies the agency (State Agency or Regional Office through the Federal Survey Team) responsible for enforcement actions and follow-up activities. Note: even if no deficiencies have been identified, the RO should still notify the facility that a Federal comparative survey has been conducted.
- 12. Copies of the information included in number 11 above should be sent to the State Agency and the COD.  
**(Reference: Enforcement Procedures)**

**Reference: (1) SOM - Section 3005 G.1. Enforcement Procedures**  
**(2) Policy and Procedures for Enforcement Procedures**



## **ENFORCEMENT PROCEDURES**

### **42 CFR Part 488.28(a)**

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#### ***Policy:***

*The Regional Office Designee (ROD) retains the authority to delegate responsibility for enforcement actions and follow-up activities to the State Survey Agency (SA) according to the attached guidelines.*

#### ***Purpose:***

- (1) To identify the responsible party for enforcement oversight.
- (2) To ensure that the facility is notified of the new deficiencies cited as a result of the Federal Comparative Survey.
- (3) To ensure that the facility takes appropriate corrective action for new deficiencies cited as a result of the Federal comparative survey.

#### ***Procedures:***

- (1) If the Federal Survey Team's (FST) 2567 reflects standard-level deficiencies not cited by the State Survey Agency (SA) and not in process of corrective action, then the SA will assume responsibility for enforcement action and follow-up activities for all privately operated facilities, unless the RO exercises its discretion to retain enforcement actions and follow-up activities in conjunction with the FST. The RO/FST will assume responsibility for enforcement actions and follow-up activities for all privately operated facilities where the FST has found condition level deficiencies or when adverse action is recommended by the RO. The RO will also assume responsibility for enforcement actions and follow-up activities for all State-owned or operated facilities in conjunction with the FST.

**(Reference: Policy and Procedure for Processing Form CMS - 2567)**

**(Reference: SOM Section 2732. Follow-up on PoC's)**

- (2) The Regional Office shall provide written notification to the facility of the comparative survey findings within 10 business days following the exit conference, including a signed copy of the supplemental 2567 prepared by the FST Leader, notice that the Plan of Correction must be forwarded to the RO for review within specified timeframes, and notice of which agency (State or RO through the FST) shall be responsible for enforcement actions and follow-up activities.
- (3) Copies of the material included in number 2 above shall be sent to the State Agency and the COD.

- (4) Once the RO has received and approved the facility's Plan of Correction, the RO shall notify the responsible entity (the State Agency or the COD if the FST is to be used) of all necessary enforcement or follow-up activities.

**(Reference: Procedures for Processing Form CMS - 2567)**

## PROCESS FOR CONDUCTING POST-SURVEY REVISITS: FOLLOW-UP OF PLANS OF CORRECTION

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### ***Policy:***

All post-survey revisits will be conducted in accordance with all applicable laws, guidelines, regulations and policies relevant to the ICF/MR program.

### ***Purpose:***

To verify correction of deficiencies previously cited on Form CMS-2567 (Statement of Deficiencies)

### ***Procedures:***

The following procedures apply to all those facilities for which the Regional Office/Federal Survey Team has retained responsibility for follow-up activities.

- (1) **Post-Survey Revisits will be conducted when:**
  - (a) One or more Conditions of Participation are not met or
  - (d) On-site review is required to verify corrections.
- (2) Once the Regional Office Designee (ROD) has received and approved the facility's Plan of Correction, the ROD will notify the COD. **(Reference: Operating Policies and Procedures for the Federal Monitoring and Oversight Contract, Enforcement, Item 4).**
- (3) Regional Office notification to the COD will include recommended timeframes within which the FST is expected to conduct a follow-up visit based on the projected dates of completion/correction of deficiencies as indicated by the facility in its Plan of Correction. The initial visit is typically conducted approximately 45 days prior to the 90 day termination date **(Reference: SOM Section )**.
- (4) Based on the timeframes recommended by the Regional Office, the COD will alert the Contractor when it is advisable to include all post-survey revisits in its proposed schedule of survey activities.
- (5) The ROD will forward copies of the facility's Plan of Correction (PoC) to the COD and the Performance Review Facility (PRF). The ROD should provide the COD with recommendations for the number of surveyors/days required to complete the follow-up visit (see number 10 below).

- (6) Once the facility is included in the Contractor's schedule for a post-survey revisit, the PRF will forward a copy of the PoC to the Federal Survey Team (FST) Leader.
- (7) The FST will perform offsite preparation activities that include reviewing the Plan of Correction (PoC).
- (8) The FST will follow the protocol for conducting post-survey revisits **(Reference: SOM Section 2732)**.
- (9) In addition to offsite preparation activities and entrance and exit conferences, the FST will perform all applicable survey tasks in Appendix J. At a minimum, the team must perform:

- **Task 1 (Sample Selection):**

The FST will utilize the sample selection procedure described in Appendix J, Task 1 when there are multiple standards cited that were not limited to a specific area or issue.

In order to avoid selecting all the same individuals from the previous survey sample, the FST will begin the interval at a different point on the list of individuals.

Individuals from the previous sample should not exceed 50% of the follow-up sample.

Sample size is the same as it was for the original survey except that the maximum is now 30 (versus 50).

When deficiencies were limited to a specific area, the follow-up sample may be drawn from the specific universe of individuals who have that specific need.

The number of individuals in the universe will determine the size of the sample in accordance with the sample selection chart in Appendix J.

- **Task 3 (individual observations)**
- **Task 4 (individual interviews)**
- **Task 7 (record verification)**
- **Task 8 (compliance decisions)**

It may not be necessary to perform:

- **Task 2** if there were no concerns regarding abuse or neglect and/or the facility's system to prevent abuse, neglect or mistreatment;
- **Task 5** if there were no issues pertaining to the facility's system of administering medications in accordance with the physician's orders;
- **Task 6** if there were no deficiencies cited regarding any areas of the facility.

It is also not necessary to perform a full review of all services. Focus on/review only those areas in which deficiencies were previously cited.

- (10) The length of time to complete the follow-up survey and the number of surveyors assigned will depend on the number and extent of the deficiencies previously cited (in facilities with many deficiencies, it may take as long to complete the follow-up visit as it did to complete the original survey) (See number 5 above). Whenever possible the FST Leader who conducted the original survey will be assigned to lead the follow-up visit.
- (11) The FST will record/list all previously cited requirements now found to be in compliance on Form CMS-2567B (Post Certification Revisit Report) to verify corrections of deficiencies previously cited on Form CMS-2567.
- (12) While the FST should not focus on requirements not previously cited, the Team is able to review and cite additional requirements as necessary. All continued (and new) requirements will be cited on a new CMS-2567 following the same timelines for completion.
- (13) If at the time of the revisit, some deficiencies have not been corrected, the FST shall complete a new Form CMS-2567 summarizing the deficiencies not corrected by data prefix tag numbers.
- (14) The FST shall follow all procedures regarding submission of reports, including Form CMS 2567B, to the ROD and the COD.
- (15) Any follow-up teleconference calls necessitated by the results of the survey team findings will be initiated by the ROD and will include the COD, the FST Leader and the PRF in order to meet all applicable timelines for notification of the facility.

**(Reference: SOM Sections 2732 and  
(Reference: Operating Policies and Procedures for the Federal Monitoring and Oversight Contract, Enforcement, Item 4).**

## PROTOCOL for CONDUCTING COMPLAINT INVESTIGATIONS & CRISIS ASSIGNMENTS

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### **Policy:**

*Complaints and reports of improper care or treatment against ICFs/MR, from any source, received by the CO, RO or the Contractor, will be evaluated to determine whether or not an investigation is warranted. These complaints/reports will be promptly evaluated and thoroughly investigated to ensure that appropriate actions are taken, i.e., in agreement with the State Operations Manual (SOM) procedural guidelines.*

### **Purpose:**

- (1) To ensure that participating facilities continually meet Medicaid requirements in asserting proper care and treatment for individuals receiving supports and services in ICFs/MR.
- (2) To ensure that all regulatory mandates are followed by Federal Survey Teams.

### **Procedures:**

- (1) For acknowledged complaints, the RO and CO will confer and evaluate the complaint to determine:
  - (a) Type of complaint
    - i. Crisis Assignments = within 24 hours
    - ii. IJ = within 2 working days of receiving the complaint  
**(Reference: Policy and Procedures for Reporting IJ)**
    - iii. Complaint Investigation = prioritize based on severity
  - (b) What type (fundamental, extended, full, comparative survey, complaint investigation), if any action is to be taken, based on the circumstances and severity of the situation
  - (c) Who will be responsible for action to be taken
- (2) If it is an Immediate Jeopardy situation, follow SOM procedures for IJ.
- (3) If it is a crisis situation, follow procedures for applicable intervention, i.e., type of survey, or investigation.

- (4) These types of activities will supercede the regularly scheduled comparative surveys.
- (5) Outcomes of all investigations will be shared with the ROD, COD and the Contractor's Performance Review Facilitator.

**(Reference: SOM Section 3280. Investigation of Complaints Against Other Than Accredited Providers and Suppliers & Policy and Procedures for Scheduling Comparative Surveys and Special Investigations).**

## DATA SYSTEM UTILIZATION

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### **Policy:**

*Data relevant to the survey process will be recorded by the Contractor to CMS's data collection and retrieval systems. Data systems include ASPEN (Automated Survey Processing Environment) and OSCAR (Online Survey and Certification Reporting System) and the forms relevant to them.*

**(See Appendix for Forms Glossary)**

### **Purpose:**

- (1) To record information collected by the Federal surveyors which will:
  - (a) facilitate communication between the Contractor, Federal Survey Team, CO, RO, SAs and ICFs/MR;
  - (b) ensure information is compared or integrated into existing databases; and
  - (c) prevent unnecessary duplication of existing government report, forms and instructions.

### **Procedures:**

- (1) CMS will provide the Contractor with the same training offered to ROs and SAs to implement forms and software.
- (2) The Contractor will ensure all contract personnel properly utilize CMS data systems and forms. Reference materials include policies and procedures outlined in the Federal regulations, in the SOM and in Transmittal Nos. 4, 277 and 278.
- (3) The Federal surveyors will utilize ASPEN to generate Form CMS- 2567 Statement of Deficiencies, Form CMS - 670, Survey Team Composition and Workload Report, and other forms required for the survey process.
- (4) The Contractor will input survey reporting data, collected by the Federal Surveyors, into OSCAR or other systems designed by the Contractor.



## Glossary A: Vocabulary

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**Abuse** - "The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting harm, pain, or mental anguish." (See 42 CFR Part 488.301)

**Allegation** - is an assertion of improper care or treatment against a Medicaid facility that could result in the citation of a Federal deficiency.

**Immediate Jeopardy** - "A situation in which the provider's noncompliance with one or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident." (See 42 CFR Part 488.301)

**Neglect** - "Failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness." (See 42 CFR Part 488.301)

**Substantial Allegation of Noncompliance** - refers to a complaint from any of a variety of sources (including complaints submitted in person, by telephone, through written correspondence, or in newspaper or magazine articles) that, if substantiated, would have an impact on the health and safety of individuals, and raises doubts as to a provider's compliance with one or more Conditions.

## Glossary B: Forms

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**Form CMS 2567:** Statement of Deficiencies/PoC  
To document the specific deficiencies cited and what is being done to remedy them.

**Form CMS 3070 G - I :** ICF/MR Survey Report  
Conditions of Participation for ICFs/MR  
Forms used in conjunction with the interpretive guidelines and survey procedures for ICFs/MR  
**(Reference Appendix J)**

**Form CMS 1539** Used to recommend termination

**Form CMS 2567B:** Post-Certification Revisit Report

**Form CMS 3070 G:** Survey Demographic Data

**Form CMS 3070 H:** Survey Report Form

**Form CMS 3070 I:** Individual Observation Worksheet

**Form CMS 670:** Survey Team Composition and Workload Report

**Form CMS 677:** Drug Pass Worksheet

Check Sheet for Comparative Surveys

### **Recommended Forms:**

Reporting Form for the State Survey Schedule

2001 Calendar for Reporting State Survey Scheduling to CMS